IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.4103 OF 1994

Life Insurance Corporation of India,
a Statutory Corporation having its
Zonal Office at "Yogakshema",
Jeewan Bima Marg,
Bombay 400 021. .. **Petitioner.**

Vs

Mrs. Roshan K.Irani,
Indian Inhabitant, residing
in Block "E" Mackwee Mansion,
Gunbow Street, Fort,
Bombay 400 001. .. **Respondent**

Mr V.Y.Sanglikar, for the petitioner.

Mr Sorab Jamshed Irani, for the respondent. (absent).

CORAM : D.B.BHOSALE, J.

DATED : 18TH MARCH, 2006

ORAL JUDGMENT : (PER D.B.BHOSALE, J.)

1. This writ petition under Article 227 of the Constitution of India is directed against the judgment and order dated 11.3.1993 rendered by the learned Principal Judge, City Civil Court, Bombay, in Misc.Appeal No.86 of 1992 by which the appeal filed by the respondent, has been allowed. The Misc.Appeal was filed against the order of eviction passed by the Estate Officer dated 14.3.1992 in Reference Case No.114 and 114-A of 1990. The order of eviction was

passed under section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, the Act") in Proforma "B" and Recovery of Damages under section 7(2)(2A)(3) in Proforma "G" against the respondent and Ms Katayum Minoo Davar. That order was carried in two appeals by the respondent and Ms Katayum Davar.

2. The factual matrix that may be relevant and material for deciding the instant writ petition, in brief, is as follows. One Mrs Bhakhtawar Darabsha Nariman was the tenant of the premises bearing T.C.No.5927 (Area 600 sq.ft.), Block- "E", Mackawee Mansion, Fort, Mumbai (for short, "the suit premises"). She died leaving behind her a daughter Ms Rati Nariman. Ms Rati Nariman was spinster. She also died on 21.8.1989. After her death, the petitioner inspected the suit premises and found the respondent and Ms Katayum Minoo Davar in occupation thereof. Ms.Katayum Davar, claims that she is the heir and legal representative of Mrs Bhaktawar and Ms.Rati Nariman. Since the suit premises was found in possession of the third parties, the petitioner on 18.1.1990, issued a quit notice by determining the monthly tenancy of the tenant. Neither the respondent nor Katayum Davar replied the said notice claiming any

right in the suit premises. The petitioner thereafter filed applications bearing Reference Case Nos 114 and 114A of 1990 before the Estate Officer under section 5 of the Act. Reference Case No.114 was for eviction and No. 114A was relating to damages for unauthorised occupation. It was a composite application considered by the Estate Officer and allowed by order dated 14.3.1992. The Estate Officer had issued show cause notices, one under section 4 and another under section 7(3) of the Act in the statutory form "A" and "F" under rule 3 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (for short, "the Rules").

3. The case set up by the respondent before the Estate Officer was that her husband was a lawful sub-tenant of the suit premises and after his death she continued to be in possession of the same as a sub-tenant of Ms.Rati Nariman, the daughter of original tenant Mrs.Bhaktawar. Reference to RAE Suit no.9797/56 was also made to contend that in the said suit the standard rent came to be fixed and she was also allowed to get independent electric meter installed outside her premises.

4. The Estate Officer, insofar as the respondent

is concerned, held that the show cause notices in Form "A" and "F" under rule 3 of the Rules were statutorily prepared and were properly served on the respondent. It was further held that the respondent could not prove successfully that she had written authority to occupy a portion of the suit premises from the petitioner-Corporation. The case of sub-tenancy had also been negatived by the Estate Officer. The Estate Officer finally allowed the applications vide his order dated 14.3.1992 and passed the order of eviction under section 5(1) in Proform "B" and Recovery of damages under section 7(2)(2A) and 3 in Proform "G".

5. Feeling aggrieved by the order of the Estate Officer, two Misc.Appeals bearing Misc. Appeal no.74 of 1992 and Misc.Appeal No.86 of 1992 came to be filed, one by Katayum Davar and other by the respondent and both were disposed of by the learned Principal Judge. Insofar as the appeal filed by the respondent is concerned, it was allowed by the impugned judgment and order dated 11.3.1993 to the extent of the portion in her occupation. Insofar as the appeal of Katayum Davar, being the legal heir and representative of the deceased Rati Nariman, is concerned, that came to be dismissed. The learned Principal Judge, City Civil Court, Bombay, held that

the respondent got into possession of the suit premises before the petitioner becoming owner thereof and that she was inducted by Mrs Bakhtawar Nariman, the original tenant, in the suit premises as joint tenant. The learned Judge took note of Ejectment Application no.28 of 1955, which was subsequently changed to RAE Suit No.9797 of 1956, filed by Mrs Bakhtawar Nariman against the respondent. That suit was compromised and standard rent of Rs.18/- per annum came to be fixed which, according to the learned Principal Judge, clearly indicates that the respondent was in possession of the suit premises as joint tenant with Mrs Bakhtawar Nariman. It was further observed that the respondent is authorised occupant of the suit premises and is, therefore, not liable to be evicted.

6. I heard the learned counsel for the petitioner for quite some time and with his assistance perused the material on record. It appears that consistently the respondent remained absent on all earlier occasions, though served, and as a result of which hearing of the petition came to be adjourned from time to time. On 13.12.2005 the petition was adjourned as a last chance to the respondent. Even today, when the matter was called out, none appeared for the respondent. In view thereof I am constrained to hear

this petition in the absence of the respondent.

7. Mr.Sanglikar, learned counsel for the petitioner, at the outset, submitted that even if it is assumed that the respondent was inducted in the suit premises by Bhaktawar Nariman and the standard rent came to be fixed in the eviction proceedings, it is clear that the respondent's induction and fixing of a standard rent was behind the back of the landlord and, therefore, her possession of the suit premises was unauthorise. Neither the original landlord nor the petitioner ever accepted the respondent as authorised occupant of the suit premises. He further submitted that even if it is accepted that the possession of the respondent was authorised in the suit premises it became unauthorised when the petitioner gave a notice and determined her authority and then initiated the proceedings for eviction. It was then contended that after holding Ms Davar, who was claiming to be the heir and representative of the original tenant, as unauthorised occupant in the suit premises, the learned Principal Judge committed grave error of law in allowing the appeal filed by the respondent holding that she is authorised occupant and, therefore, not liable to be evicted from the suit premises. Mr Sanglikar further submitted that in any

case the respondent cannot claim better right, title and interest in the suit premises than of the original tenant Bhaktawar who allegedly had inducted her in the suit premises as sub-tenant. Lastly, he submitted that in any case the respondent cannot claim any protection under the Bombay Rent Act since the provisions of the Act override the provisions of the Bombay Rent Act.

8. It appears from the material on record and more particularly the written statement of the respondent that Mrs Bhakhtawar was the tenant in the suit premises and that she had inducted the respondent as her tenant. This is also evident from the fact that Mrs Bhaktawar had filed ejectment application against the respondent which was subsequently converted into RAE suit and in that suit the consent terms were filed by the parties and the suit was disposed of in terms of the consent terms. By the consent terms, a standard rent came to be fixed at Rs.18/- per annum to be paid to Bhaktawar and the respondent was permitted to place separate electric meter outside her premises. That all happened in 1952. This clearly shows that Mrs Bhakhtavar had accepted the respondent as sub-tenant in the suit premises. Even if it is accepted, as observed by the

learned Principal Judge, that the respondent was joint tenant it cannot be said that her status either as joint tenant or as sub-tenant was ever accepted by the then landlord or by the petitioner. Neither the earlier landlord nor the petitioner was party to the said proceedings. The induction of respondent was without written or even implied permission of the landlord. Therefore, in any case, the respondent cannot claim any right in the suit premises qua the landlord when admittedly the suit premises is a public premises and the occupants of such premises are not entitled for protection under the Rent Act. The law is well settled that the provisions of the Public Premises Act, to the extent they cover premises falling within the ambit of the Rent Control Act, override the provisions of the Rent Control Act and a person in unauthorised occupation of public premises under section 2(e) of the Act cannot invoke the protection of the Rent Control Act. This is settled by the Apex court in **Ashoka Marketing Ltd and Anr Vs. Punjab National Bank and ors, AIR 1991 SC 855.** There is no dispute that the premises in question is a public premises within the meaning of section 2(e) of the Act.

9. The Apex Court in **Kaiser-I Hind Pvt Ltd and**

others V National Textile Corporation Ltd and Ors, AIR 2002 Supreme Court 3404 had an occasion to consider the challenge to vires of the Act insofar as it is made applicable to the premises belonging to Government Companies and Corporations. In that matter, it was submitted that the Act was violative of Articles 14, 19(1)(f) and 19(1)(g) of the Constitution of India. It was further contended that having regard to Article 254(2) of the Constitution of India, provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the Bombay Rent Act) would prevail over the Public Premises (Eviction of Unauthorised Occupants) Act. The contentions raised by the appellant were rejected by the High Court and the validity of the Act was upheld. While upholding the validity of the Act, the Supreme Court addressed the second contention in the judgment and after considering the relevant provisions of the Act in the light of the submissions advanced by the learned counsel, observed that it cannot be held that summary speedier procedure prescribed under the Act for evicting the tenants, sub-tenants or unauthorised occupants, if it is reasonable and in conformity with the principles of natural justice, would abridge the rights conferred under the Constitution. It was further observed that there is no question of giving

supremacy to the Bombay Rent Act qua the law made by the Parliament, i.e. the Act. Unauthorised occupant including a person whose tenancy has come to an end by efflux of time or by giving notice as provided in law would have no further statutory protection from being evicted under the Rent Act. He also would have no right to contend that particular procedure which was in existence at some point of time should continue. It is for the legislature to provide reasonable procedure in accordance with the principles of natural justice for evicting unauthorised occupants including a person whose tenancy is terminated or a sub-tenancy.

10. At this stage, the definition of an "unauthorised occupation" under section 2(g) of the Act will have to be seen. The definition reads thus:

> "Unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority whether by way of grant or any other mode of transfer under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

The Supreme Court had an occasion to deal with the definition of "unauthorised occupation" in **Ashoka**

Marketing case (supra). Paragraph 30 of the judgment wherein the expression "unauthorised occupation" has been interpreted by the Supreme Court, reads thus:

> "30. The definition of the expression "unauthorised occupation" contained in Section 2(g) of the Public Premises Act is in two parts. In the first part the said expression has been defined to mean the occupation by any person of the public premises without authority for such occupation. It implies occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and it expressly covers continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. This part covers a case where a person had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words "whether by way of grant or any other mode of transfer" in this part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The definition of unauthorised occupation contained in Section 2(g) of the Public Premises Act would, therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law."

Thus, the second part of the definition of "unauthorised occupation" under section 2(g) of the

Act covers continuance in occupation by any person of the public premises after the authority whether by way of grant or any other mode of transfer under which he was allowed to occupy the premises has expired or has been determined. It also covers a case where a person has entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined.

11. The definition of "unauthorised occupation" also fell for the consideration of the Supreme Court in **M/s Jain Ink Manufacturing Company Vs. Life Insurance corporation of India and another, AIR 1981 Supreme Court 670**. The Supreme Court after considering the definition, in paragraph 5 of the judgment, observed thus:

> ".. .... it is manifest that S.2(2)(g) does not use the word "possession" or the words "entry into possession" at any point of time at all. The section merely requires occupation of any public premises. Entry into possession connotes one single terminus, viz. the point of time when a person enters into possession or occupies the properly whereas occupation is a continuous process which starts right from the point of time when the person enters into possession or occupies the premises and continues, until he leaves the premises. What is germane for the purpose of interpretation of section 2(2)(g) is whether

> or not the person concerned was in occupation of the public premises when the premises Act was passed.... "

The Supreme Court has made it clear that the definition of "unauthorised occupant" requires occupation of any public premises. The point of time when a person enters into possession or occupies the property is not relevant. Occupation is a continuous process which starts right from the point of time when the person concerned enters into possession or occupies the premises and continues until he leaves the premises and that he was in occupation of the public premises when the Act was passed.

12. It is, thus, clear that the expression "unauthorised occupation" under section 2(g) connotes occupation by any person of the "public premises" under section 2(e) of the Act without authority for such occupation. It implies occupation by a person who has entered into occupation of any public premises without lawful authority. It also covers any person, whose legal authority to remain in the public premises has been determined by the landlord for committing breach of the terms and conditions of the tenancy. In other words, an "unauthorised occupant" is one whose tenancy has been terminated by giving notice as

provided in law. Such occupant would have no further statutory protection from being evicted under the Rent Act. The requirement of law for eviction under the provisions contained in the Act is that the occupation of public premises should be unauthorised within the meaning of section 2(g).

13. Insofar as the facts of the present case are concerned, according to the case set up by the respondent that she was inducted in the suit premises as a sub-tenant by the original tenant-Mrs Bhaktawar. However, the fact remains that the respondent's induction in the suit premises was without written permission and behind the back of the landlord. The eviction proceedings in which standard rent came to be fixed was also without joining the landlord as party. Moreover, the respondent and Mrs Bhaktawar were given notice by the petitioner determining the tenancy on that ground. The respondent did not produce on record a single scratch of paper to show that her occupation was authorised except the averments to that effect in the pleadings. In my opinion, the definition of "unauthorised occupation" contained in section 2(g), clearly covers the case of the respondent. The entry of the respondent in the suit premises even before the petitioner becoming the owner thereof is of no

consequence. Merely because the respondent was inducted before the petitioner became owner would not make the possession of the respondent authorised in the suit premises on the date when the Act came into force and after the tenancy was determined by the petitioner. It is not the case of the respondent that she was not aware of the fact that the petitioner had become the owner of the property. Moreover, it cannot be overlooked that she cannot claim any protection whatsoever under the provisions of the Bombay Rent Act.

14. The composite application, bearing Reference Case nos 114 and 114A of 1990, filed by the petitioner against Ms. Bhakhtavar and the respondent, was contested by both and the Estate Officer allowed the said application. That order was challenged by both, the respondent and Ms Davar in appeal under section 9 of the Act. The Principal Judge, City Civil Court, Bombay dismissed the appeal filed by Ms.Davar whereas the appeal filed by the respondent was allowed though the contentions of both before the Estate Officer and the appeal court were similar. Out of the total premises admeasuring 600 sq.ft it appears that a small room is in possession of the respondent. Major portion has already been surrendered by Ms.Davar to

the petitioner who held to be in unauthorised occupation. It is against this backdrop the learned counsel rightly contended that the respondent, who claims to be the sub-tenant, could not have claimed better right and/or interest in the suit premises than the tenant-Bhaktawar.

15. The Court below got influenced by the RAE suit filed against the respondent in the Small Causes Court seeking eviction which ended in the compromise decree. Merely because the eviction proceedings were filed and concluded in compromise would not make the possession of the respondent authorised. The Court below also held that the appellant has been in use and occupation of the portion of the premises since 1952 and since that fact has been conclusively established by virtue of the said suit it is clear that the respondent was accepted as joint tenant of the suit premises. As a matter of fact, the respondent never claimed to be joint tenant. Her case was that she was sub-tenant of Ms.Bhaktawar and after her death she became deemed tenant and is, therefore, entitled to protection under the Rent Act. This being the public premises the landlord has every right to seek possession from "unauthorised occupant" by following the due procedure, which in my opinion, the petitioner did

follow in the instant case. The protection under the Bombay Rent Act was not available to the respondent. Keeping that in view the finding recorded by the Court below that the occupation of the respondent as joint tenant is authorised cannot be sustained. Looking to the case from any angle, I am satisfied, the occupation of the respondent is and was unauthorised as contemplated under section 2(g) of the Act.

16. In the result, the writ petition is allowed. The impugned order dated 11.3.1993 insofar as the respondent is concerned, is quashed and set aside. Rule is, accordingly, disposed of. There will be no order as to costs.

(D.B.Bhosale, J.)